appear that the condition was part of a scheme to monopolize, and no greater restrictions are laid down than necessary for the plaintiff's interest. Doubtless the decision can be explained because of the modern horror of forfeiture with the consequent willingness of the courts to stretch a point, if necessary, to avoid it. *Cf. Clement* v. *Burtis*, 121 N. Y. 708, 24 N. E. 1013.

ESTATES IN FEE SIMPLE — DETERMINABLE FEES IN AMERICA — PROPERTY TAKEN BY EMINENT DOMAIN. — Land belonging to the plaintiff was taken by a railroad by eminent domain proceedings under a statute which provided that the railroad should be "seised in fee . . . and hold and use for the purposes specified." The railroad when it no longer needed the land for its purpose sold it to the defendant. *Held*, that the railroad having only a determinable fee, on the abandonment the plaintiff was entitled. *Lithgow* v. *Pearson*, 135 Pac. 759 (Colo.).

Property can be taken by eminent domain proceedings for public purposes only. *In re Tuthill*, 163 N. Y. 133, 57 N. E. 303; *Edgewood Railway Company's Appeal*, 79 Pa. 257. Consequently merely such an interest in the property should be taken as is necessary to carry out the public purpose. *Conklin* v. *Old Colony R. Co.*, 154 Mass. 155, 28 N. E. 143; *Kansas Central Ry. Co.* v. *Allen*, 22 Kan. 285. It has been held that the legislature should be the judge of what this interest is. *Fairchild* v. *City of St. Paul*, 46 Minn. 540, 49 N. W. 325. The majority of courts, however, construe eminent domain statutes as authorizing the condemnation only of an easement. *Proprietors of Locks and Canals* v. *Nashua and Lowell R. R. Co.*, 104 Mass. 1; *Kellogg* v. *Malin*, 50 Mo. 496. Where the taker is the state or municipality, the fee simple is often held to pass. *Haldeman* v. *Penn. Central R. R.*, 50 Pa. 425; *Malone* v. *Toledo*, 34 Oh. St. 541. The principal case using the machinery of a determinable fee to accomplish the desired limitation of the interest seems to have but little following. *Matthieson & Hegeler Zinc Co.* v. *La Salle*, 117 Ill. 411, 8 N. E. 81. The effect of the Statute of *Quia Emptores* was to destroy the tenure formerly existing between the grantor of a fee simple and his grantee and therefore theoretically determinable fees can no longer be created where *Quia Emptores* is in force, as is the case in nearly all American jurisdictions. See GRAY, RULE AGAINST PERPETUITIES, §§ 31–41 a, 774–788; 17 HARV. L. REV. 297–316. But if a statute can be construed to authorize the creation of such an interest in certain cases it may be argued that it has to that extent repealed *Quia Emptores*. If this is sound it would seem that eminent domain statutes of the type in the principal case have created an exception to the general rule in favor of landowners whose property is taken by condemnation proceedings. It must furthermore be admitted that apart from any statutory provisions there is a tendency in the United States to ignore the theoretical difficulties and allow determinable fees in all cases. *First Universalist Society* v. *Boland*, 155 Mass. 171, 29 N. E. 524.

INTERSTATE COMMERCE — CONTROL BY STATES — RAILROAD REGULATION — REGULATIONS BY STATE COMMISSION AS TO DEMURRAGE. — The Michigan Railroad Commission passed certain demurrage rules applicable to all traffic beginning or ending within the state. These rules allowed shippers from one to three days longer for loading and unloading goods than the rules of the Interstate Commerce Commission. The plaintiff filed a bill to restrain the state commission from enforcing its rules. *Held*, that the commission will be enjoined. *Michigan Central R. Co.* v. *Michigan R. Commission*, 20 Det. Leg. News 946 (Sup. Ct., Mich., Oct. 11, 1913).

The court is right in holding that the rules are unconstitutional so far as they apply to interstate traffic, as being a regulation of interstate commerce as such. *Wabash, St. Louis & Pacific R. Co.* v. *Illinois*, 118 U. S. 557. See